

Social Security Number Privacy Act

The scourge of identity theft is a phenomenon that has flourished in modern electronic culture. Criminals who engage in this foul practice are particularly interested in obtaining unsuspecting victims' social security numbers. Protecting this information is vital to combating identity theft.

The Legislature has enacted new law in response to this problem. On March 1, 2005 the Social Security Number Privacy Act, 2004 PA 454, MCL 445.81 *et seq.*, (the Act) went into effect. The Act contains a number of protective measures, such as: limitations on circumstances where disclosure of social security numbers can be required, mandates calling for the adoption and implementation of certain protections, and the establishment of penalties for violations of the Act. There are implications for Michigan's public libraries under the Act. Thus, it is vital that libraries understand how they may be affected by the Act.

Section 3, of the Act, MCL 445.83, prohibits local legal entities like libraries from: intentionally displaying publicly more than four sequential digits of a social security number, the use of more than four sequential digits as an individual's account number, visibly printing more than four sequential digits on identification badges, requiring the transmission of more than four sequential digits via computer unless the transmission is encrypted, requiring that more than four sequential digits be disclosed to access the internet, or requiring that persons include more than four sequential digits on documents sent through standard mail if the information is visible from the outside of the envelope.

Although there are many limitations on when social security numbers can be requested, there are also exceptions. They are also found in section 3 of the Act. The Act permits the use of more than four sequential digits for administrative purposes as part of the ordinary course of business and if the disclosure is for one of the reasons stated in the Act, such as for identification purposes.

Section 3, subsection 3(b), is another exception that provides the use of all or more than four sequential digits as a primary account number is acceptable if the use of the information began before the effective date of the Act (March 1, 2005) and if the use is ongoing and continuous as part of the ordinary course of business. However, if the use is stopped for any reason, the exception stated in section 3, subsection 3(b) no longer will apply.

While requesting, requiring, and retaining library user's social security number information is not encouraged, it is not legally prohibited. Libraries that have required this type of information historically and/or currently have not necessarily run afoul of the law. Libraries may fit into one of the exceptions in the Act.

If a library elects to continue to request and retain library user's social security number information or retains this information in the ordinary course of library business, it is crucial that the library adopts a privacy policy as mandated by section 4 of the Act, MCL 455.84. Section 4, subsection 1 mandates that beginning **January 1, 2006**, a person in the ordinary course of business who obtains or retains information about one or more social security numbers must create a privacy policy that does **at least all of the following**:

- (a) Ensures to the extent practicable the confidentiality of the social security numbers.
- (b) Prohibits unlawful disclosure of the social security numbers.
- (c) Limits who has access to information or documents that contain the social security numbers.
- (d) Describes how to properly dispose of documents that contain the social security numbers.
- (e) Establishes penalties for violation of the privacy policy.

It is important to reiterate that the statutory language stated above sets forth the **minimum** protections to be afforded by the privacy policy.

Again, it is vital that affected libraries adopt a privacy policy and put it in place in accordance with the Act by January 1, 2006. Section 4, subsection 2, identifies where these policies must be published. Section 4(2) states:

- (2) A person that creates a privacy policy under subsection (1) shall publish the privacy policy in an employee handbook, in a procedures manual, or in 1 or more similar documents, which may be made available electronically.

The Act also establishes penalties for intentional violations. They are found in section 6, MCL 455.86. Intentional violations are classified as misdemeanors "punishable by imprisonment for not more than 93 days or fines of not more than \$1000.00, or both". Section 6 also authorizes individuals commence civil litigation against persons who have knowingly violated the Act to "recover actual damages, or \$1000.00, whichever is greater." This section further provides that reasonable attorney's fees may be awarded to the aggrieved party. Finally, the subsection does not apply where an employee or agent has unlawfully disclosed information in violation of a privacy policy created in accordance with section 4.

The above discussion focuses on how Michigan's public libraries may be affected by the Social Security Number Privacy Act. Affected libraries should work with their attorneys to create and adopt new policies in compliance with section 4 of the Act. It is also important to inform and educate library employees and trustees about the implications and mandates of the Act. As always, please feel free to contact Lance M.

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